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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,958	07/30/2003	Thomas Wuske	71072	1769
23872 7590 03/21/2007 MCGLEW & TUTTLE, PC P.O. BOX 9227 SCARBOROUGH STATION SCARBOROUGH, NY 10510-9227			EXAMINER MOSS, KERI A	
			ART UNIT 1743	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 03/21/2007	DELIVERY MODE PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/630,958

Applicant(s)

WUSKE ET AL.

Examiner

Keri A. Moss

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,9-11 and 13-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,9-11,13,14,16,18,20,22 and 23 is/are rejected.
- 7) ☒ Claim(s) 4,5,15,17,19,21 and 24-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's Response to Restriction Requirement filed December 11, 2006 is hereby acknowledged. Claims 1,3-5, 9-11 and 13-30 are pending.

### ***Response to Amendment***

2. Applicant's amendments and arguments have overcome the previous rejection under Kremer as well as the rejection under 35 USC 112, 2<sup>nd</sup> paragraph.
3. Examiner maintains the rejection under Avakian.

### ***Election/Restrictions***

4. In light of applicant's amendments and arguments, examiner has withdrawn the restriction requirements.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims **1, 3-4, 9-11, 13-14, 16 and 30** are rejected under 35 U.S.C. 102(b) as being anticipated by Rabenecker et al (USP 6,129,894). Rabenecker discloses a device for collecting and releasing a sample liquid, the device comprising a sample collector with a porous and dimensionally stable sampling tip (part 2) for taking up the

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sample liquid in the sampling tip; and a pressure means (part 4) for generating an overpressure in the pores of the sampling tip to release the sample liquid from the sampling tip, said pressure means being displaceable relative to the sample collector and pushing together of said pressure means and said sample collector generating an overpressure in the sampling tip. The pressure means is provided to bring about the penetration of a reagent liquid from a reagent container into the pores during the pushing together of the pressure means and of the sample collector (column 2 lines 52-54). The sampling tip has an indicator zone, which indicates the uptake of the sample liquid by means of a moisture indicator indicating a collecting of a predetermined volume of the sample liquid (moisture is visible, see column 2 lines 35-36). The sampling tip (part 2) and the beaker-shaped reagent container (part 7) fully enclose a volume. The sampling tip collects sample liquid by capillary action (column 2 lines 20-24). The pressure device includes a plunger insertable into the second axial end of the sample collector. The plunger and the inside of the sample collector are shaped to generate an overpressure when the plunger is inserted into the second axial end. There is a reagent capsule arranged inside the sample collector.

7. Claims **1, 3, 18, 20 and 22-23** are rejected under 35 U.S.C. 102(b) as being anticipated by Avakian (USP 3,985,032). Avakian discloses a device for collecting and releasing a sample liquid (micropipette and filter tips), the device comprising a sample collector (Figs. 1, 2, 5 and 6) with a porous and dimensionally stable sampling tip (parts 20 or 24) for taking up the sample liquid in the sampling tip, a pressure means for

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generating an overpressure in the pores of the sampling tip to release the sample liquid from the sampling tip (micropipette), said pressure means being displaceable relative to the sample collector and pushing together of said pressure means and said sample collector generating an overpressure in the sampling tip (inherent). The pressure means is capable of bringing about the penetration of a reagent liquid from a reagent container into the pores during the pushing together of the pressure means and of the sample collector (inherent). The sample collector has a cylindrical shape with first and second ends and includes a sampling tip arranged at the first axial end (Fig. 1). The outer portion of the sampling tips extends out of the first axial end and defines a cavity arranged opposite the outer portion (see Fig. 2). The pressure device is arranged at the second axial end of the sample collector (inherent). The pressure device includes a cylinder defining a chamber (inherent), said second axial end of the sample collector and the chamber being shaped to generate said overpressure when said second axial end is inserted into said chamber (due to interlocking of tip to micropipette). The fastening and sealing devices on the sample collector are the lip in Fig. 1 and the inherent positive locking connection between the micropipette and the tip due to the tight fit of the tip onto the micropipette. The pressure device includes a plunger (see column 2 line 39-43) insertable into the second axial end of the sample collector, said plunger and an inside of said sample collector being shaped to generate said overpressure when said plunger is inserted into said second axial end (inherent).

***Response to Arguments***

8. Applicant argues that Avakian's element 24 takes up the sample. Examiner notes that Avakian teaches that element 24 is porous and absorbent (column 2 lines 24-29). Absorbent is defined as "to take in; soak in or up." Therefore Avakian positively teaches that element 24 takes up the sample.

***Allowable Subject Matter***

9. Claims 4-5, 15, 19, 21 and 24-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art does not teach or suggest a reagent container with an overflow channel along an inner side at the open end for receiving excess reagent when the sample collector is inserted into the chamber.

The prior art does not teach or suggest a liquid sampling system comprising a sample collector with a sampling tip that defines a cavity and also comprises a filter mixer connectable with said sample collector and a puncturing device arranged at the second axial end of the sample collector for puncturing the closure of a reagent arranged in said chamber.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keri A. Moss whose telephone number is 571-272-8267. The examiner can normally be reached on 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keri A. Moss  
Examiner  
Art Unit 1743

KAM 3/5/07

A handwritten signature in black ink, appearing to read 'B. R. Gordon', with a long horizontal flourish extending to the right.

BRIAN R. GORDON  
PRIMARY EXAMINER